

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 8, 2010

- D056562     Bell v. The Superior Court of San Diego County**  
The petition is denied.
- D054521     People v. Alexis C.**  
The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Irion, J.
- D056239     Bloodworth v. Superior Court of Imperial County/People**  
The stay issued on December 18, 2009, is vacated. The petition is denied.
- D056699     Clemans, Jr. v. Superior Court of San Diego County/Gardner**  
The petition is denied.
- D055465     In re Miguel A., a Juvenile**  
The true finding for the offense of battery under section 242 is reversed and remanded to the juvenile court with direction to dismiss that court. In all other respects the judgment is affirmed.  
Huffman, Acting P.J.; We Concur: McDonald, J., Aaron, J.

Court convened at 9:00 a.m.

Present:     The Honorable Judith McConnell, Presiding Justice, and  
                 The Honorable Associate Justices Gilbert Nares and Joan Irion  
Clerk:        D. Moore

- D054170     People v. Cluke**  
**D054173     People v. Cluke**  
Cause called on merits. Charles R. Khoury, Esq. argued for appellant. Randall Einhorn, Deputy Attorney General, argued for respondent. Mr. Khoury replied. Cause submitted.
- D052520     People v. Kramer**  
Cause called on merits. Nicholas DePento, Esq. argued for appellant. Theodore Michael Cropley, Deputy Attorney General, argued for respondent. Mr. DePento replied. Cause submitted.
- D054245     People v. Tillis**  
Cause called on merits. Jean Ballantine, Esq. argued for appellant. Theodore Michael Cropley, Deputy Attorney General, argued for respondent. Ms. Ballantine replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 8, 2010 (Continued)

Court recessed at 10:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and  
The Honorable Associate Justices Richard Huffman and Judith Haller  
Clerk: D. Moore

**D055680 In re A.S., a Juvenile**  
Cause called on merits. Richard Pfeiffer, Esq. argued for appellant.  
Lisa Maldonado, Deputy County Counsel, argued for respondent.  
Valerie Lankford, Esq. argued for the minor. Mr. Pfeiffer replied.  
Cause submitted.

**D055630 In re V.F., a Juvenile**  
Cause called on merits. Leslie A. Barry, Esq. argued for appellant.  
Carl Fabian, Esq. argued for the minor. No appearance by county counsel.  
Ms. Barry replied. Cause submitted.

Court recessed at 2:08 p.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and  
The Honorable Associate Justices James McIntyre and Cynthia Aaron

**D054941 McConkey v. Steel**  
Cause called on merits. James F. Dunn, Esq. argued for appellant.  
Lee E. Hejmanowski, Esq. argued for respondent. Mr. Dunn replied.  
Cause submitted.

**D054866 Risely v. Interinsurance Exchange of the Automobile Club**  
Cause called on merits. Christopher W. Bayuk, Esq. argued for appellant.  
K. Michele Williams, Esq. argued for respondent. Mr. Bayuk replied.  
Cause submitted.

Court recessed at 2:50 p.m. to change panel members.

New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and  
The Honorable Associate Justices James McIntyre and Cynthia Aaron

**D054264 People v. McBride**  
Cause called on merits. John Gregory Derrick, Esq. argued for appellant. Gary  
Schons, Deputy Attorney General, argued for respondent.  
Mr. Derrick replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 8, 2010 (Continued)

Court recessed at 3:22 p.m. until Tuesday, February 9, 2010 at 9:00 a.m.

**D048239     Bardales v. Duarte**

The order is affirmed. The matter is remanded to the trial court for its determination of an award to Respondent of attorney fees on appeal. Respondent is awarded costs on appeal. CERTIFIED FOR PUBLICATION. McConnell, P.J.; We Concur: Haller, J., McIntyre, J.

**D054563     People v. Pressley**

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., Aaron, J.

**D053347     People v. Sullivan**

The judgment is reversed as to the second degree murder conviction and the accompanying enhancement. In all other respects the judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D056126     In re A.H.**

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rules 8.412(d)(1)(A), and 8.416(g). The appeal is dismissed.

**D056700     In re Polley on Habeas Corpus**

The petition is denied without prejudice to refilling with the appropriate documentary support.

**D056564     In re El-Shaddai on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 9, 2010

- D056582     In re Castle on Habeas Corpus**  
The petition is denied.
- D056710     Bays v. O'Rourke et al.**  
Albert O'Rourke's request for Permission to Appeal dated January 27, 2010, is denied. (Code of Civ. Proc., § 391.7, subd. (b).) The appeal filed by Albert O'Rourke with the Superior Court on January 22, 2010, is dismissed.
- D053266     Center Associates et al. v. Altman et al.**  
The order denying the special motion to strike is affirmed. Appellants' motion to strike is denied in part regarding the Respondents' briefing and granted in part regarding the Respondents' appendix, pages 49 through 127. No attorney fees or sanctions are awarded. Appellants to pay all ordinary costs of appeal. Huffman, Acting P.J.; We Concur: Haller, J., Irion, J.
- D055658     In re T.N.W. et al., Juveniles**  
The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., Haller, J.
- D054326     People v. Gray**  
The judgment is modified by staying the sentence for petty theft with a prior theft conviction (§§ 484, subd. (a), 666) (count 2). As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward it to the Department of Corrections and Rehabilitation. McConnell, P.J.; We Concur: McDonald, J., Aaron, J.
- D052520     People v. Kramer**  
The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Nares, J.
- D054245     People v. Tillis**  
Tillis' conviction for pandering and human trafficking are reversed and the matter is remanded. The judgment with respect to sexual penetration is affirmed. Irion, J.; We Concur: McConnell, P.J., Nares, J.
- D054822     People v. Woods**  
The judgment is affirmed.  
Haller, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

February 9, 2010 (Continued)

**D054627     People v. Bey**

The judgment is affirmed with directions to correct the abstract of judgment as set forth in this opinion. A copy of the amended abstract of judgment shall be forwarded to the Department of Corrections and Rehabilitation.

Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

Court convened at 9:00 a.m.

Present:     The Honorable Patricia Benke, Acting Presiding Justice, and  
                 The Honorable Associate Justices Judith Haller and Terry O'Rourke  
Clerk:        D. Moore

**D054685     Plaza Home Mortgage, Inc. v. North American Title Company, Inc.**

Cause called on merits. Lynde Selden, II, Esq. argued for appellant.

Ryan C. Squire, Esq. argued for respondent. Mr. Selden replied. Cause submitted.

**D054564     Quigley et al. v. Toler**

Cause called on merits. Kirk Miller, Esq. argued for appellant.

Joshua J. Herndon, Esq. argued for respondent. Mr. Miller replied.

Cause submitted.

**D055119     Mira Mar Mobile Community Homeowners Association et al. v. Kendall West, LLC et al.**

Cause called on merits. C. William Dahlin, Esq. argued for appellant.

Robert Fuselier, Esq. argued for respondent. Mr. Dahlin replied. Cause submitted.

Court recessed at 10:17 a.m. to change panel members.

New panel members:   The Honorable Patricia Benke, Acting Presiding Justice, and  
                                 The Honorable Associate Justices Richard Huffman and Terry O'Rourke

**D055480     In re J.R., a Juvenile**

Cause called on merits. Richard Pfeiffer, Esq. argued for appellant.

Carl Fabian, Esq. argued for the minor. Katherine Bird, Deputy County Counsel, argued for respondent. Mr. Pfeiffer replied. Cause submitted.

**D054525     People v. Cole**

Cause called on merits. Anthony Edward Colombo, Esq. argued for appellant.

Hazel Pangan, Certified Law Student, argued for respondent. Mr. Columbo replied. Cause submitted.

Court recessed at 11:02 a.m. until 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 9, 2010 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and  
The Honorable Associate Justices James McIntyre and Terry O'Rourke  
Clerk: D. Moore

**D054912 California Valley Miwok Tribe v. California Gambling Control Commission**  
Cause called on merits. Manual Corrales, Esq. argued for appellant.  
Randall Anthony Pinal, Deputy Attorney General, argued for respondent.  
Mr. Corrales replied. Cause to be submitted at a later date.

**D055101 Reyno et al. v. Option One Mortgage et al.**  
Cause called on merits. Jeffrey Marc Schwartz, Esq. argued for appellant.  
Geraldine A. Valdez, Esq. argued for appellant, Option One Mortgage.  
Jennifer Bender, Esq. argued for appellant, Litton Loan Servicing and etc.  
Mr. Schwartz replied. Cause submitted.

Court recessed at 2:25 p.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and  
The Honorable Associate Justices James McIntyre and Joan Irion

**D055254 K. Hovnanian Forecast Homes, Inc. v. IRC Coachella Ventures, LLC**  
Cause called on merits. James Christophe Jardin, Esq. argued for appellant.  
Deborah Suzanne Dixon, Esq. argued for respondent. Mr. Jardin replied.  
Cause submitted.

Court recessed at 2:46 p.m. to change panel members.

New panel members: The Honorable James McIntyre, Acting Presiding Justice, and  
The Honorable Associate Justices Cynthia Aaron and Joan Irion

**D053980 Hardage Hotels X, LLC v. First Co.**  
Cause called on merits. Jeff G. Harmeyer, Esq. argued for appellant.  
Michael A. San Filippo, Esq. argued for respondent. Mr. Harmeyer replied.  
Cause submitted.

Court recessed at 3:35 p.m. until Wednesday, February 10, 2010 at 9:00 a.m.

**D056473 In re L.C., a Juvenile**  
This matter has been review by Associate Justices Benke, Nares and McDonald.  
The notice of appeal challenges an order that is not appealable in that it precedes the  
dispositional judgment. The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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- D056174    Veronica V. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**  
The petition is denied. McDonald, J.; We Concur: Huffman, Acting P.J., Nares, J.
- D055836    In re Zachary G., a Juvenile**  
The orders are affirmed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.
- D056583    In re Whitten on Habeas Corpus**  
The petition is denied.
- D054544    Krouner v. California Department of Real Estate**  
The petition for rehearing is denied.

Court convened at 9:00 a.m.

Present:     The Honorable Patricia Benke, Acting Presiding Justice and  
              The Honorable Associate Justices Alex McDonald and Terry O'Rourke

- D054887    People v. Corona**  
Cause called on merits. Mark Day, Esq. argued for appellant. Ian Schuler, Certified Law Student, argued for respondent. Mr. Day replied. Cause submitted.
- D054354    People v Carr Jr. et al.**  
Cause called on merits. John Lanahan, Esq. argued for appellant Mack. Russell Babcock, Esq. argued for appellant Carr. Gerhart Brozio, Deputy Attorney General, argued for respondent. Mr. Lanahan replied. Cause submitted.
- D055014    People v. Francis**  
Cause called on merits. Sachi Wilson, Esq. argued for appellant. Emily Hanks, Deputy Attorney General, argued for respondent. Ms. Wilson replied. Cause submitted.
- D054703    Hart et al. v. Shotten et al.**  
Cause called on merits. Michael Millerick, Esq. argued for appellant. William Tucker, Esq. argued for respondent. Mr. Millerick replied. Cause submitted.
- D053828    Linear Electric, Inc. v. Moorfield Construction, Inc.**  
Cause called on merits. Mathieu Blackston, Esq. argued for appellant. Richard Soll, Esq. argued for respondent. Mr. Blackston replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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February 10, 2010 (Continued)

Court recessed at 10:25 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and  
The Honorable Associate Justices Cynthia Aaron and Joan Irion  
Clerk: D. Moore

**D054883 Rigsby v. Rigsby**  
Cause called on merits. Jacqueline Rigsby, argued for appellant in pro per, via telephone. Stephen Temko, Esq. argued for respondent. Ms. Rigsby replied. Cause submitted.

Court recessed at 1:54 p.m. to change panel members.

New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and  
The Honorable Associate Justices James McIntyre and Cynthia Aaron

**D054247 Cirillo v. Crooks**  
Cause called on merits. Richard H. Benes, Esq. argued for appellant, and submitted additional authorities. Stephen Temko, Esq. argued for respondent. Mr. Benes replied. Cause submitted.

**D054210 Montoya v. Shah**  
Cause called on merits. David R. Blake, Esq. argued for appellant. William Taylor Carss, Esq. argued for respondent. Mr. Blake replied. Cause submitted.

Court recessed at 2:37 p.m. to change panel members.

New panel members: The Honorable Judith McConnell, Presiding Justice, and  
The Honorable Associate Justices Gilbert Nares and Joan Irion

**D054831 Lomas v. Dragosz**  
Cause called on merits. John V. Hager, Esq. argued for respondent. Michael J. Brown, Esq. argued for appellant. Cause submitted.

Court recessed at 3:01 p.m. until Thursday, February 11, 2010 at 9:00 a.m.



COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 10, 2010 (Continued)

**D053210     Coronado City Views, LLC v. Regatta Bay, LLC et al.**

The judgment is reversed. The postjudgment order is also reversed to the extent it denies defendants' motion for a new trial, and the court is directed on remand to enter a new order granting the motion. Retrial is limited to CCV's claim that defendants' alleged conduct caused it to incur damages related to the relocation of the transformer from lot 8. The issue of defendants' liability is to be retried as well as damages. CCV is not to relitigate the issue of construction delay damages related to delays in the burying of the utility lines. (See *Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 678 [appellate court may order limited new trial].) The order is affirmed to the extent it denies defendants' motion for JNOV. Defendants are awarded costs on appeal. McConnell, P.J.; We Concur: Huffman, J., McIntyre, J.

**D055684     People v. Beaudette**

The judgment is affirmed. The trial court is directed to correct the indeterminate term abstract of judgment to reflect that Beaudette was not awarded any Penal Code section 4019 conduct credits and to forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. The court is further directed to retract and strike the erroneously filed determinate term abstract of judgment and to inform the Department of Corrections and Rehabilitation of that retraction. McDonald, J.; We Concur: Nares, Acting P.J., Aaron, J.

**D054661     People v. Shareef**

The judgment is affirmed. Nares, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

**D053158     MJB Development Group v. Diamond Escrow, Inc., et al.**

The portion of the order imposing sanctions on appellants MJB and Winn under section 128.7 is reversed. In all other respects, the order is affirmed. Appellants shall recover their costs on appeal. Nares, J.; We Concur: McConnell, P.J., Huffman, J.

**D056736     Mira Mar Mobile Community Homeowner's Association, Inc. v. Superior Court of San Diego County/Kendall West, LLC**

The petition is denied.

**D056584     In re Hasan on Habeas Corpus**

The petition is denied.

**D056595     In re Bell on Habeas Corpus**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 10, 2010 (Continued)

**D056568     State of California ex rel. Department of Transportation v. Superior Court of San Diego County/San Bernardino County Flood Control District et al.**  
The petition is denied.

**D055720     In re Destini H. et al., Juveniles**  
The orders are affirmed.  
O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 11, 2010

**D055514     People v. Williams**

Williams's conviction on count 12 is reversed and remanded with instructions that count 12 be dismissed; the imposition of 25-year-to-life sentences under section 667.61, subdivision (a), on counts 2 through 11 is reversed and remanded for resentencing consistent with the views expressed herein; the trial court is further directed to correct the abstract of judgment to reflect that Williams was convicted by a jury; in all other respects, the judgment is affirmed.  
Benke, Acting P.J., We Concur: Haller, J., O'Rourke, J.

**D054941     McConkey v. Steel**

The order is affirmed. McConkey is entitled to costs on appeal.  
McConnell, P.J.; We Concur: McIntyre, J., Aaron, J.

**D056596     In re Galinski on Habeas Corpus**

The petition is denied.

**D056715     Peck et al. v. Superior Court of San Diego County/Crowley et al.**

The petition is denied.

Court convened at 9:00 a.m.

Present:     The Honorable Richard Huffman, Acting Presiding Justice, and  
                 The Honorable Associate Justices Judith Haller and Alex McDonald  
Clerk:        D. Moore

**D055007     In re Mathewson on Habeas Corpus**

Matter called on merits. Brandie Grover Devall, Esq. argued for appellant, telephonically. Gregory John Marcot, Deputy Attorney General, argued for respondent. Ms. Devall replied. Matter submitted.

**D054147     Gomez et al. v. Autozone Stores, Inc., et al.**

Cause called on merits. Charles Moore, Esq. argued for appellant. Gregg C. Sindici, Esq. argued for respondent. Mr. Moore replied. Cause submitted.

Court recessed at 9:33 a.m. to change panel members.

New panel members:    The Honorable Richard Huffman, Acting Presiding Justice, and  
                                 The Honorable Associate Justices Judith Haller and Terry O'Rourke

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

February 11, 2010 (Continued)

**D054761    Alatrisme v. Cesar's Exterior Designs, Inc., et al.**

Cause called on merits. Jeffrey Scott Hood, Esq. argued for appellant.  
Mary R. Robberson, Esq. argued for respondent. Mr. Hood replied.  
Cause submitted.

Court recessed at 10:04 a.m. to change panel members.

New panel members:    The Honorable Richard Huffman, Acting Presiding Justice, and  
                                    The Honorable Associate Justices Alex McDonald and Terry O'Rourke

**D053413    Bains et al. v. Gardner**

Cause called on merits. Patricia A. Meyer, Esq. argued for appellant, Henkel and  
etc. Reid Mason Figel, Esq. argued for appellant, Gardner, telephonically.  
Ms. Meyer replied. Ms. Meyer replied. Mr. Figel replied. Cause submitted.

Court recessed at 11:02 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present:        The Honorable Judith McConnell, Presiding Justice, and  
                    The Honorable Associate Justices Judith Haller and Cynthia Aaron  
Clerk:         D. Moore

**D055977    Duncan v. Superior Court/People-RPI**

Matter called on merits. Brian Eric Watkins, Esq. argued for appellant.  
James Atkins, Deputy District Attorney, argued for real party in interest.  
Mr. Watkins replied. Matter submitted.

Court recessed at 1:56 p.m. to change panel members.

New panel members:    The Honorable Richard Huffman, Acting Presiding Justice, and  
                                    The Honorable Associate Justices Judith Haller and Cynthia Aaron

**D054471    Riverwatch et al. v. County of San Diego Dept. of Environmental Health et al.**

Cause called on merits. Walter Edward Rusinek, Esq. argued for appellant.  
Patrick E. Breen, Esq. argued for respondent. Mr. Rusinek replied.  
Cause submitted.

Court recessed at 2:29 p.m. to change panel members.

New panel members:    The Honorable Patricia Benke, Acting Presiding Justice, and  
                                    The Honorable Associate Justices Richard Huffman and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 11, 2010 (Continued)

**D054452    Cisneros v. Lujan et al.**

Cause called on merits. William F. Roche, Esq. argued for appellant.  
Ethan Marcus, Esq. argued for respondent. Mr. Roche replied. Cause submitted.

Court recessed at 3:07 p.m. to change panel members.

New panel members:    The Honorable Patricia Benke, Acting Presiding Justice, and  
                                 The Honorable Associate Justices Richard Huffman and Alex McDonald

**D054229    Pardo v. University of California, San Diego Medical Center**

Cause called on merits. Steven H. Zeigen, Esq. argued for appellant.  
John Robert Liset, Esq. argued for respondent. Mr. Zeigen replied.  
Cause submitted.

Court recessed at 3:37 p.m. to change panel members.

New panel members:    The Honorable Richard Huffman, Acting Presiding Justice, and  
                                 The Honorable Associate Justices James McIntyre and Joan Irion

**D055167    In re Batie on Habeas Corpus**

Matter called on merits. Michael Satris, Esq. argued for appellant.  
Kim Aaron, Deputy Attorney General, argued for respondent. Mr. Satris replied.  
Matter submitted.

Court adjourned at 4:15 p.m.

**D055267    In re Jolie C., a Juvenile**

The order terminating reunification services is reversed and the finding that James received reasonable services is vacated. The matter is remanded to the juvenile court with directions to order a minimum of six months of reunification services. Haller, J.; We Concur: Nares, Acting P.J., McIntyre, J.

**D056778    Bowen v. Superior Court of San Diego County/Anytime Towing**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

February 11, 2010 (Continued)

**D056178     Sommer v. Hawkes**

The court has received and considered appellant's letter brief dated November 28, 2009, and respondent's letter brief dated December 3, 2009, addressing the appealability of the September 24, 2009, order identified in appellant's notice of appeal. The matter having been considered by Presiding Justice McConnell and Associate Justices Nares and McDonald, the appeal is dismissed on the grounds it is taken from a nonappealable order, and is untimely as to the May 5, 2009, order identified in appellant's amended notice of appeal.

Under rule 8.104(a)(3), the time for filing a notice of appeal from the May 5, 2009, order denying appellant's motion to stay abstracts of judgment expired, at the latest, 180 days after entry of that order, or on Monday, November 2, 2009. Because appellant first identified the May 5, 2009, order in his amended notice of appeal filed on November 19, 2009, the appeal is untimely as to the May 5, 2009, order. To the extent appellant's initial notice of appeal filed on October 22, 2009, can be liberally construed as an appeal from the May 5, 2009, order, the appeal is still untimely. Under California Rules of Court, rule 8.104(a)(1), a notice of appeal must be filed no later than 60 days after the superior court clerk serves the party filing the notice of appeal with a file-stamped copy of the judgment or appealable order showing the date it was served. The court clerk triggered the 60-day period to appeal the May 5, 2009, order by serving the parties with a file-stamped copy of the order, with a certificate of service attached to it, on May 7, 2009. Consequently, under rule 8.104(a)(1), the last day to file a notice of appeal from the May 5, 2009, order was July 6, 2009, unless the time to appeal was extended under rule 8.108.

Under California Rules of Court, rule 8.108 (c) or (e), appellant's "Motion to Reconsider and Vacate" the May 5, 2009, order extended the time to appeal, at most, to 90 days from May 21, 2009, the date he filed the motion, or to August 19, 2009. Accordingly, both his notice of appeal filed on October 22, 2009, and his amended notice of appeal filed on November 19, 2009, are untimely as to the May 5, 2009, order. If a notice of appeal is filed late, the appellate court is without jurisdiction to proceed and must dismiss the appeal. (Cal. Rules of Court, rule 8.104(b); *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.)

**D054525     People v. Cole**

The judgment is affirmed.  
Huffman, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

**D055630     In re V.F. et al., Juveniles**

The orders are affirmed. Huffman, J.; We Concur: McConnell, P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
February 12, 2010

Court Holiday